

# EXHIBIT A

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
TYLER DIVISION

ADVANCEME, INC., )  
VS. ) Case No.:  
RAPIDPAY, LLC, BUSINESS ) 6:05CV-424-LED-JDL  
CAPITAL CORPORATION, FIRST ) Tyler, Texas  
FUNDS, LLC, MERCHANT MONEY )  
TREE, INC., REACH )  
FINANCIAL, LLC AND FAST )  
TRANSIT, INC. d/b/a SIMPLE ) July 17, 2007  
CASH ) 1:02 p.m.

TRANSCRIPT OF TRIAL  
BEFORE THE HONORABLE LEONARD DAVIS  
UNITED STATES DISTRICT JUDGE

APPEARANCES:

FOR THE PLAINTIFF: MR. RONALD S. LEMIEUX  
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APPEARANCES CONTINUED ON NEXT PAGE

COURT REPORTER: MS. THERESE J. CASTERLINE,  
CSR, RMR, CRR  
Deputy Official Court Reporter

(Proceedings recorded by mechanical stenography,  
transcript produced on CAT system.)

1 it -- was innovative. Postage was his largest expense,  
 2 and in 1989, when he needed money, he turned to -- who?  
 3 A. Little & Company.  
 4 Q. Yeah, but what -- in what capacity? It  
 5 says --  
 6 A. I'm sorry, turned to his credit card  
 7 processor.  
 8 Q. Credit card processor, a New Hampshire-based  
 9 company called Little & Company. Little agreed to  
 10 finance his postage by discounting his credit card  
 11 receivables.  
 12 Does that help you any in remembering who  
 13 was who in the two Little & Companies?  
 14 A. No, these are Randy Bourne's words, not mine.  
 15 MR. CARROLL: Thank you.  
 16 A. This is his definition.  
 17 MR. CARROLL: No further questions.  
 18 THE COURT: All right. Redirect?  
 19 REDIRECT EXAMINATION  
 20 BY MR. BUSS:  
 21 Q. Mr. Bouchard, if I understood your testimony  
 22 when I was asking you questions, inside this processing  
 23 cloud here, there were actually three entities that  
 24 were doing some processing, correct?  
 25 A. In the case of Little & Company, yes.

1 Q. Right. And one of those was NPC?  
 2 A. Yes.  
 3 Q. And one of those was First National Bank of  
 4 Louisville?  
 5 A. First National Bank of Louisville.  
 6 Q. I'll just put FNBL.  
 7 A. Yes.  
 8 Q. And the other one was Little & Company?  
 9 A. Yes.  
 10 Q. And each one of these had a separate  
 11 processing function, correct?  
 12 A. Correct.  
 13 Q. And each one of those charged for a fee for  
 14 the processing that they did?  
 15 A. Correct.  
 16 Q. Okay. Now, would you -- also Mr. Carroll  
 17 brought out the fact that this in this member  
 18 agreement, FNBL actually purchased the credit card  
 19 transactions from the merchants, correct?  
 20 A. Correct.  
 21 Q. So when net proceeds actually came back in,  
 22 they came back in to FNBL, correct?  
 23 A. Correct.  
 24 Q. Because FNBL purchased those transactions?  
 25 A. That's correct.

1 Q. So those funds were owned by FNBL, correct?  
 2 A. Correct.  
 3 Q. And then it's only because of the merchant's  
 4 instructions to Little that Little can direct where those  
 5 funds go, correct?  
 6 A. That's correct.  
 7 Q. And in the instance of the postage advance,  
 8 the merchant would direct Little to instruct FNBL to  
 9 send a portion to the Bank of Boston, correct?  
 10 A. Correct.  
 11 Q. And then the remainder would go back to the  
 12 merchant, correct?  
 13 A. Correct.  
 14 Q. And it was only because the merchant gave  
 15 Little those instructions that Little could then move the  
 16 funds, correct?  
 17 A. Correct. Again, under the MasterCard and Visa  
 18 rules, to be in compliance, when you get to that net  
 19 proceed calculation, that's the merchant's money. It  
 20 is only the merchant that can direct those funds.  
 21 Q. Okay. And so when those funds get into here,  
 22 to FNBL, they're not owned by Little & Company?  
 23 A. No.  
 24 Q. So they're forwarded to Bank of Boston, Little  
 25 & Company, and at that time, they're owned by Little &

1 Company, correct?  
 2 A. Correct.  
 3 MR. BUSS: Okay. Your Honor, before I  
 4 forget, can I move this into evidence?  
 5 THE COURT: If there's no objection. Has  
 6 it been marked?  
 7 MR. CARROLL: The board?  
 8 MR. BUSS: Yes.  
 9 MR. CARROLL: I think it's a  
 10 demonstrative, Your Honor. I object on that basis.  
 11 MR. BUSS: I think it --  
 12 MR. CARROLL: The one thing we know is  
 13 that Mr. Bouchard doesn't know who, you know, Little &  
 14 Company is. So I think to that extent, it's fine as a  
 15 demonstrative, but I would object to it as an exhibit.  
 16 THE COURT: Overruled. It will be  
 17 admitted. Mark it with an exhibit number.  
 18 MR. BUSS: Do you want me to give it an  
 19 exhibit number?  
 20 THE COURT: Yeah.  
 21 (Exhibit Number 426 marked.)  
 22 MR. BUSS: 426.  
 23 Q. Before I leave this board, Mr. Bouchard, I  
 24 want to make one more point. Is NPC in any way related  
 25 to Little & Company?

<p style="text-align: right;">Page 50</p> <p>1 A. No.  2 Q. Is FNBL in any way related to Little &amp; Company?  3 A. No.  4 Q. Mr. Bouchard -- Larry, one other thing I want  5 to move to with respect to Hanover Finance.  6 You said that once you got that letter,  7 you actually set it up, put the system into place so  8 that it would take place?  9 A. Correct.  10 Q. And then if I understand it, the only reason  11 you don't recall if it actually happened -- and I'm  12 talking about the forwarding of funds here -- is  13 because it's really one of the thousands of other  14 transactions that were processed in Little's daily  15 operations; is that correct?  16 A. That's correct.  17 Q. Okay. Do you have any reason to -- to doubt  18 whether funds were actually forwarded? Were you ever  19 aware of a problem with --  20 A. The only -- no. The only reason that funds  21 would not have been forwarded -- if I could answer it  22 that way -- is if Museum Publications did not submit  23 any credit card transactions for processing, if they  24 submitted transactions for processing which resulted in  25 net proceeds, the system would have taken place and</p>	<p style="text-align: right;">Page 52</p> <p>1 A. Yes.  2 MR. BUSS: No further questions, Your  3 Honor.  4 THE COURT: All right. Any recross?  5 MR. CARROLL: No, Your Honor.  6 THE COURT: You may stand down.  7 Who will be your next witness?  8 MR. GRAY: Your Honor, the Defendants  9 would like to call Mr. Tim Little, founder of Little &amp;  10 Company.  11 THE COURT: How long do you anticipate his  12 testimony?  13 MR. GRAY: I would anticipate about 30  14 minutes on direct.  15 THE COURT: All right. I think we'll go  16 ahead and take about a 10-minute recess.  17 THE BAILIFF: All rise.  18 (Recess 2:09-2:24 p.m.)  19 THE BAILIFF: All rise.  20 THE COURT: Please be seated. All right.  21 You may call your next witness.  22 MR. GRAY: Mr. Little.  23 THE COURT: Have you been sworn,  24 Mr. Little?  25 THE WITNESS: Yes, I have.</p>
<p style="text-align: right;">Page 51</p> <p>1 moved the funds in accordance with the agreement.  2 Q. Okay. One other note.  3 In -- did Little have the ability to split  4 funds and direct those funds to a number of different  5 locations when Little was operating back in 1992?  6 A. Yes.  7 Q. So Little -- if the merchant had instructed  8 Little, Little could have forwarded those funds to two  9 different accounts?  10 A. Yeah, I -- the -- again, when you get to the  11 net proceeds, there was -- there was a limit, but I  12 believe it was -- to the best of my recollection, we  13 had the capability to automatically do somewhere in  14 the vicinity of five transfers per day per merchant,  15 five sets of instructions, if you will.  16 Q. Okay. When Little &amp; Company was bought out in  17 1995, did Little &amp; Company -- or did -- who were they  18 bought out by, again?  19 A. First USA.  20 Q. Okay. And did First USA continue with the  21 business of Little &amp; Company?  22 A. Yes.  23 Q. Did they continue processing transactions and  24 paying -- paying back creditors for -- for merchants'  25 debt?</p>	<p style="text-align: right;">Page 53</p> <p>1 MR. McSWANE: Your Honor, just one matter.  2 Mr. Bouchard who just testified, may he be permanently  3 excused?  4 THE COURT: Any objection?  5 MR. CARROLL: No, Your Honor.  6 THE COURT: All right. Yes, he may.  7 DIRECT EXAMINATION  8 BY MR. GRAY:  9 Q. Good afternoon, Mr. Little. Would you please  10 state and spell your name for the record.  11 A. It's Thomas Little, L-I-T-L-E, one T.  12 Q. And, Mr. Little, when did you first become  13 involved in the payment-processing industry?  14 A. In the payment-processing industry, in about  15 1981.  16 Q. What were you doing at that time?  17 A. My wife and I ran a mail order catalog. She  18 was the person that published the catalog or -- and  19 picked out the merchandise, and I was the guy that ran  20 the back room and -- related to everything that had  21 anything to do with after a person ordered something  22 from the catalog.  23 Q. What is the back room?  24 A. The back room is what the catalog industry  25 sometimes calls the operations.</p>

1 Q. Is it part of the same entity?  
 2 A. At the time -- at that time, no. We -- the  
 3 catalog itself was one entity and the fulfillment was  
 4 another entity, because we took on other catalogs from  
 5 other customers at the same time. I believe at the  
 6 time we had 14 customers, including our own catalog.

7 Q. So did that cause you to become involved in  
 8 the payment-processing industry?

9 A. Yes, it did. Actually, there were three  
 10 reasons I became involved in the payment-processing  
 11 industry. The first reason was at the time, mail order  
 12 catalogs were getting about 2 percent chargebacks from  
 13 the credit card processing environment, and that was  
 14 pretty costly, and it was unclear why, and -- why  
 15 the -- why we were getting such high chargebacks at  
 16 such high cost. We couldn't resolve them. The banking  
 17 system didn't help us at all.

18 And I got together on a regular basis with  
 19 other catalogers, and they came to me and said, you're  
 20 the techy; you fix it. So that was one reason.

21 Another reason was our salesperson from at  
 22 the time Chase, who was our payment-processing  
 23 salesperson, kept calling me the customer from hell  
 24 because I kept complaining about all the problems with  
 25 the credit card environment. And he said, if you're so

1 smart, why don't you do it.

2 The third reason, which is maybe the most  
 3 important reason, was our fulfillment customers -- we  
 4 had -- as I say, we had 14 fulfillment customers, and  
 5 13 of them were not our catalog, and it took us a long  
 6 time to collect our payments.

7 So starting a credit card processing  
 8 business meant that we could propose to those catalogs  
 9 in 1982 that we would take our fees from the proceeds  
 10 of the Visa/MasterCard -- from the Visa/MasterCard  
 11 proceeds to pay for -- the fulfillment bills for two  
 12 things, really, as it turned out.

13 One was the fulfillment bills that we  
 14 would normally send to the catalogs, and the second one  
 15 was for the postage deposits that, in the fulfillment  
 16 business, the catalogs are obligated to fund in  
 17 advance.

18 Q. So was that the genesis of your first  
 19 payment-processing company?

20 A. Yeah. For those three reasons, I explored the  
 21 possibility of getting into the payment-processing  
 22 business, and I had -- I had a background in  
 23 technology, so that's what it took to do.

24 Q. What was that background in technology?  
 25 A. I was educational and experienced -- I'm a

1 graduate of Cal Tech. I've been to the missile  
 2 program. I'm an electronic engineer. I -- I've  
 3 designed various things. My whole -- my career has  
 4 pretty much been in the direct marketing community, and  
 5 I've done computer applications for the  
 6 direct-marketing community virtually my whole career,  
 7 and I worked as an engineer for -- for the first six  
 8 months of my career, and ever since I've worked for  
 9 companies that I've started myself that have primarily  
 10 been technology-oriented in the technology marketing  
 11 community.

12 Q. Have you ever won any direct marketing awards?

13 A. Yes, I have. I think the first one we won was  
 14 a direct marketing ECHO Award, and the Direct Marketing  
 15 Association gives out awards for the best promotional  
 16 programs. They're pretty well known. And as far as I  
 17 know, I'm the only person that ever got an award for  
 18 technology in the direct marketing industry, and so I  
 19 got a Gold ECHO Award.

20 Q. What was the technology you developed?

21 A. It had to do with that -- in that case, fraud  
 22 prevention, credit card fraud prevention, and that was  
 23 in the early part of our payment-processing activities.

24 I also won -- I was honored with a Hall of  
 25 Fame Award from the Direct Marketing Association, and I

1 guess that's kind of distinguished because I'm one of  
 2 the few people that won that award that's still alive.

3 And then this fall, I'm getting the --  
 4 something called the Ed Mayer Award, which is more  
 5 significant to me, actually, than the Hall of Fame  
 6 Award, and that's for contributions to the direct  
 7 marketing industry in general and has a lot to do with  
 8 education of young people learning how to be direct  
 9 marketers, et cetera.

10 MR. GRAY: Would you move the mike back  
 11 just a little bit back from your mouth.

12 THE WITNESS: Can you still hear me?

13 Q. So how long -- what was the name of your first  
 14 payment-processing company?

15 A. Direct Marketing Guaranty Trust.

16 Q. Is that the DMGT?

17 A. Yes.

18 Q. And how long did -- or what ultimately  
 19 happened to DMGT?

20 A. Well, ultimately, I left it because at the  
 21 time I -- my partner and I were running it, and at the  
 22 time I was on the -- chairman of the ethics operating  
 23 committee for the DMA, and my partner, who had control  
 24 of the stock, wanted to sell the data we had on our  
 25 computers, and we'd been running that as a

1 payment-processing company for two or three years and  
 2 we had a lot of data. At the time, it was highly  
 3 unethical to do that. Now it's illegal to do that,  
 4 according to Graham, Leach and Bliley.

5 Q. What kind of data?

6 A. Huh?

7 Q. What kind of data?

8 A. It was credit card data. It was mailing  
 9 address data. It was back-up data. And now Graham,  
 10 Leach and Bliley say it's legal. I wouldn't have any  
 11 part of it, so I left that company.

12 Q. What did you do at that time?

13 A. I started Little & Company -- a company called  
 14 Little & Company, which is not the same company as Little  
 15 & Company now.

16 I started that in -- in early 1986, and  
 17 that was a payment-processing company. And that  
 18 company grew and prospered and did quite a bit better  
 19 than actually DMGT did, and I sold that in 1985. But I  
 20 didn't -- I really sold my stock, but I did not sell my  
 21 name.

22 And so that company had to rename itself,  
 23 and it renamed itself to Paymentech. Paymentech did  
 24 not buy Little & Company; Paymentech is the other  
 25 Little & Company.

1 Q. And this is the Paymentech we've heard  
 2 testimony about today?

3 A. Yes.

4 Q. Approximately how much did you sell Little &  
 5 Company to what -- to the owner -- the current owners  
 6 of Paymentech for?

7 A. Well, the Inc. magazine says \$80 million. It  
 8 was frankly much more than that.

9 Q. How much more?

10 A. \$250 million more.

11 MR. GRAY: If I could get Plaintiff's  
 12 Exhibit 246.

13 Q. You just mentioned the Inc. magazine article.  
 14 Do you see this on your screen --

15 A. Yes, I do.

16 Q. -- the cover page of this magazine?

17 Is the issue you're referring to September  
 18 2006?

19 A. Yes.

20 MR. GRAY: And if I could please get  
 21 page 2 of this exhibit.

22 Q. And I see that in this article Little & Company  
 23 is the number 1 business. What was this a ranking of?

24 A. This was the fastest-growing privately held  
 25 companies in the United States. After I sold the old

1 Little & Company and it became Paymentech, I had a  
 2 five-year noncompete. After that noncompete was up, I  
 3 started this company, and as I still had use of my  
 4 name, this new company is called Little & Company.

5 Q. And is that your current employer today?

6 A. Yes.

7 Q. And is Little & Company today also a payment  
 8 processor?

9 A. It is.

10 Q. Now, at -- I believe we heard testimony  
 11 earlier from Mr. Goldman that credit card processing  
 12 has become sort of a commodity. So how did you  
 13 distinguish yourself in that industry?

14 A. Well, we've always distinguished ourselves.  
 15 It's been a pattern, is -- first of all, we primarily  
 16 process card-not-present companies. And what we do is  
 17 the typical payment processing, but we also understand  
 18 how payment processing is essential to the marketing  
 19 scheme of companies, and we've always helped companies  
 20 deal with their marketing issues, and always understood  
 21 the payment-processing issues for card-not-present  
 22 companies very well because we understood  
 23 card-not-present companies themselves.

24 And so we've always helped a great deal  
 25 with our customers, and we've helped them in all kinds

1 of ways. We also help our noncustomers, and very often  
 2 they become customers as a result.

3 Q. Can you please describe how you helped some of  
 4 your customers in their marketing efforts.

5 A. Well, some of them are -- some of them have  
 6 been pretty significant over the years, and, frankly,  
 7 I'm proud of them.

8 One of them was a little company called  
 9 Quantum Computer, and they had an idea, and they --  
 10 they had charged for their services on a monthly basis.  
 11 They charged credit card -- their subscribers on credit  
 12 cards and they had about 12 percent of their  
 13 subscribers were directly debited to checking accounts;  
 14 their checking accounts had ACH debits against them.  
 15 And we worked with those guys.

16 But they were giving away a free trial,  
 17 and they didn't have the customer service people to  
 18 answer the phones. So when people wanted to cancel,  
 19 they didn't cancel it; they got all kinds of chargeback  
 20 problems with Visa and MasterCard, and because they  
 21 were directly debiting people's checking accounts, they  
 22 got in a lot of trouble with the Feds.

23 And so we stepped in and we helped  
 24 organize a way for them to get out of it. Sometimes we  
 25 can be heavy-handed. And we went in and said, you have

1 to hire 400 customer service people. And they did it,  
 2 and they didn't stop until there were 4,000 and they  
 3 would not be in business today without our  
 4 intervention.

5 But one of the things that happened in the  
 6 meantime was they got sued by Quantum Storage Products,  
 7 and they had to change their name, so they changed  
 8 their name to America Online.

9 Others are CDW in Chicago, which many  
 10 people know. CDW ran into a lot of problems with  
 11 Visa/MasterCard, and we helped -- we helped them get  
 12 out of it. We've helped a lot of marketing programs.  
 13 In fact, one of our customers was Signature Dining  
 14 Card -- or Signature Group.

15 And they got in a lot of trouble with  
 16 their credit card processing, and -- I won't go through  
 17 the whole story, but the Signature Dining Group's  
 18 marketing program offering people to be able to  
 19 register any free credit cards and do the dining  
 20 programs that we've heard about in this -- in this  
 21 courtroom, that -- that whole idea of registering any  
 22 three credit cards was our idea, and that's what we did  
 23 for our customers.

24 Q. Your idea, as in Little & Company's idea, or  
 25 your personal idea?

1 A. In that case, it was my personal idea.  
 2 Q. So when Mr. Falke testified the other day that  
 3 third party did the scrubbing transactions for Dining  
 4 Ala Card, was that third company Little & Company?  
 5 A. Yes, it was.

6 There were other things that we did for  
 7 the direct-marketing industry or for the credit card  
 8 world. One of the things was, we were widely -- or  
 9 years ago, when I was in the subscription fulfillment  
 10 business, we basically did the model and the -- for the  
 11 carrier route presort system and developed it. It  
 12 involves how more than half of all mailing goes through  
 13 the post office.

14 Q. What year was that?

15 A. Well, we actually developed the system for the  
 16 Christian Science Publishing Society to get the  
 17 newspaper delivered on time. It was getting delivered  
 18 70 percent of the time, and after they used our system,  
 19 it got delivered 92 percent of the time on time.

20 And the Postal Service saw what we did,  
 21 and they also analyzed it and they discovered it saved  
 22 them 60 percent of their costs; in other words, it only  
 23 cost 40 percent as much to deliver the Christian  
 24 Science Monitor. And so they asked us if we could see  
 25 if we could expand it and do trials for other -- in

1 other venues.

2 So we did it for catalogs and magazines  
 3 and other magazines. And then eventually it was  
 4 adopted as the way to deal with mailing all mail for  
 5 people -- for quantity mailers.

6 Q. When you sold the first Little & Company in  
 7 1995, is your resume correct that Little & Company was  
 8 processing \$40 billion annually in credit card  
 9 receipts?

10 A. I think so. I don't remember exactly, but,  
 11 yes.

12 MR. GRAY: And that's Defendants'  
 13 Exhibit 98, is Mr. Little's resume.

14 Q. What I would like to focus on for the rest of  
 15 your testimony is the first Little & Company that  
 16 existed between 1985 and when you sold it in 1995.

17 A. All right.

18 Q. And you heard the testimony about the postage  
 19 advance program, so I would like to clarify a few  
 20 issues.

21 A. Okay.

22 Q. First, do you agree with Mr. -- what  
 23 Mr. Bouchard described as how the standard transaction  
 24 was processed by Little & Company, NPC and FNBL?

25 A. Yes, I do.

1 Q. Were there any other entities, other than  
 2 those three, that processed transactions in conjunction  
 3 with Little & Company?

4 A. Yes, there were. There -- as we -- or as I've  
 5 heard before there, we've talked about all kinds of  
 6 diagrams, acquiring banks and issuing banks and  
 7 authorization people and all of these guys that are  
 8 involved, and I think Larry called it the cloud --  
 9 that's what the cloud is all about.

10 NPC, FNBL and Little & Company were three  
 11 of the entities in that cloud. There was authorization  
 12 networks; there was issuing banks. All of that is in  
 13 the cloud. But, yes, NPC, FNBL and Little & Company  
 14 were certainly in that cloud.

15 Q. When card issuers credited money to an account  
 16 somewhere in that cloud, where was that account held?

17 A. That account, by regulation, is held at the  
 18 acquiring bank. That's the acquiring bank's primary  
 19 function, is to deal with the -- with receiving the  
 20 money from the card-issuing banks.

21 Q. Was FNBL the acquiring bank?

22 A. Yes.

23 Q. Was there a separate account for every  
 24 merchant into which funds from the issuing banks would  
 25 be deposited?

1 A. No. It was on a daily basis. FNBL received  
 2 its settlement from the clearinghouse, the Visa and  
 3 MasterCard -- the two clearinghouses that Visa and  
 4 MasterCard ran.

5 Q. Are you aware of any -- any way a card  
 6 transaction could be processed that did not involve  
 7 funds being credited from the card issuer directly to  
 8 the acquiring bank's bank account?

9 A. Not -- not in those days. Probably three or  
 10 four years before, you -- it was -- it wasn't done that  
 11 way, but for a variety of reasons, mostly for control,  
 12 because Visa and MasterCard had been burned by not  
 13 having an acquiring bank in the middle. They set it up  
 14 so that that's the only way that funds get from issuing  
 15 banks to merchants, is by way of the acquiring bank.

16 Q. And that acquiring bank, there's one single  
 17 account into which all funds from all card issuers are  
 18 deposited; is that your --

19 A. It may be more than one account, but it's not  
 20 many accounts. It's certainly not by merchant.

21 Q. In whose -- in whose name is that account?

22 A. In that case, FNBL. It's an FNBL -- an  
 23 FNBL-owned account, and it's a "for the benefit of  
 24 Little kind of account," but it's -- no. In FNBL, they  
 25 may have had an account for us, but it wasn't by

1 use Wells Fargo for that -- it is also at Wells Fargo  
 2 and owned by Wells Fargo, so assuming at least one of  
 3 merchants had some changes in their reserves, so there  
 4 would be 12.

5 If there were -- okay. I'll -- I think  
 6 that's the end of that.

7 Q. Well, my question was, for the postage advance  
 8 situation.

9 A. Oh, if -- if a merchant had a postage advance,  
 10 for example, or any kind of advance, then the -- there  
 11 would be -- if one merchant had one, there would be one  
 12 additional forwarding, and that would forward -- that  
 13 transfer would be to whatever bank account the merchant  
 14 told us to forward the funds to.

15 Q. So in that situation, there would be 13?

16 A. That's right.

17 Q. 13 amounts forwarded; is that right?

18 A. That's true.

19 Q. And if -- in these postage advances, if you  
 20 look at --

21 MR. GRAY: If you'll please pull up  
 22 Defendants' Exhibit 16. And could you please pull up  
 23 the first paragraph.

24 Q. Mr. Carroll was mentioning earlier that this  
 25 mentions Little & Company in two places. It says, in

1 merchant. It would have been an account -- however  
 2 they called it -- an operating account for us.

3 Q. Did a merchant ever have access to that  
 4 account?

5 A. No.

6 Q. And today, in the payment-processing industry  
 7 today, does a merchant ever have access to the account  
 8 at the acquiring bank that receives funds from card  
 9 issuers?

10 A. No.

11 Q. So in this postage advance program we were  
 12 discussing, the funds would flow from the card issuer  
 13 to FNBL; is that correct?

14 A. That's right.

15 Q. And then, from there, when the funds are in  
 16 the account at FNBL, how would those funds be split and  
 17 where would they be forwarded to?

18 A. They would be split based on instructions that  
 19 Little & Company gave them, and they would be forwarded  
 20 to various places. The minimum number of places it  
 21 would be forwarded to for -- let's say there were 10  
 22 merchants -- would be 12: 10 transfers to each of the  
 23 merchants, one transfer to us for our fees, and one  
 24 transfer into a reserve account that would also be at  
 25 FNBL, or at least the -- today, the way we operate, we

1 consideration of Little & Company making advances for  
 2 the account of member to Postmaster, member agrees to  
 3 pay on demand the principal amount of advance plus  
 4 accrued interest. And then it says Little & Company --  
 5 at 10 percent to Little & Company.

6 A. Right.

7 Q. And then it also says -- hold on. Stop there.

8 So if you replace Little & Company in that  
 9 paragraph with ABC Company, a company completely  
 10 unrelated to Little & Company, and a merchant handed you  
 11 this same promissory note with ABC Company on it, how  
 12 does that process change that you just described?

13 A. It would simply be a different bank account  
 14 that the funds got transferred to. It's exactly the  
 15 same process.

16 Q. Do you have to make any changes to the system?

17 A. No.

18 Q. Do you have to get any additional  
 19 authorizations?

20 A. No.

21 Q. Do you have to run that by FNBL to see if they  
 22 are okay with that?

23 A. No.

24 Q. And now just to clear up was Mr. Bouchard was  
 25 unable to testify to, were there two separate Little &

Page 70	Page 72
<p>1 Companies or was there one single Little &amp; Company?  2 A. There was one single Little &amp; Company.  3 Q. So would the Little &amp; Company processing be  4 related to the Little &amp; Company postage advancing?  5 A. It was basically a separate division or a  6 separate department within Little &amp; Company. There was  7 two -- it was two separate functions, and they were  8 treated as totally separate functions. Just exactly  9 like in a bank, the -- in a bank that issues credit  10 cards is an acquiring bank, there are two separate  11 departments in that bank, the issuing part of the bank  12 and the acquiring part of the bank.</p> <p>13 Q. Is American Express an example of such a bank?  14 A. Yes. Well, it's not exactly a bank, but  15 American Express has the issuing side to their  16 business, and it's run in an entirely separate way than  17 the acquiring part of their business.</p> <p>18 Citicorp has an issuing side of their  19 business and they have an acquiring side of their  20 business. In fact, Wells Fargo has an issuing side of  21 their business and they have an acquiring side of their  22 business.</p> <p>23 Lots of banks, particularly banks that  24 issue credit -- well, JP Morgan Chase has a huge  25 card-issuing part of their business, and Paymentech is</p>	<p>1 Q. The first question I asked was, where are the  2 postage advance repayments forwarded to, which bank  3 account?  4 A. To the Bank of Boston.  5 Q. And the second question was, to which bank  6 account are process -- were processing fees forwarded?  7 A. I believe it was another bank. It wasn't the  8 Bank of Boston. The reason we had the Bank of Boston  9 for the -- for the postage advance fees is because we  10 wanted to expand the business, and it was financed --  11 I -- it was our company money or my money that was  12 financing it or behind it. We did not have anybody  13 helping us finance that. We didn't have a bank to do  14 that. And we were trying to get Bank of Boston to do  15 that for us.</p> <p>16 One of the problems -- one of the reasons  17 that we didn't expand the business a lot more is  18 because the seasonal nature of postage financing all  19 came at the same time, and if we had done 10 of these  20 things, it would have been \$3 million of capital we had  21 to put in, and we didn't have it at the time.</p> <p>22 And so we were looking to Bank of Boston  23 to help us with that, and we were -- it appeared as if  24 we'd be successful, except during that period of time,  25 most of the banks in New England seemed to go out of</p>
<p style="text-align: center;">Page 71</p> <p>1 the acquiring part of their business. They're run as  2 separate organizations. They have separate issues.  3 They often have disputes between each other, because  4 when credit card transactions go bad, they have to  5 resolve them within the bank. It -- they have to be  6 two separate organizations. I know of no bank that has  7 such an organization.</p> <p>8 Q. So within Little &amp; Company, how were those  9 divisions segregated?</p> <p>10 A. Well, they were segregated. They had  11 different banking accounts; they had different P&amp;L  12 statements; they had different balance sheets. But  13 Little &amp; Company itself, the balance sheets and the P&amp;Ls  14 were consolidated at the -- after -- you know, after --  15 at the end of the year.</p> <p>16 Q. Within the postage advance program, where was  17 the bank account to which postage advance repayments  18 were forwarded?</p> <p>19 A. It was at Bank of Boston.</p> <p>20 Q. And where were the repayments for -- for  21 processing fees forwarded? To which bank account?  22 A. Bank of Boston.</p> <p>23 Q. Is that to the same account?  24 A. Could you ask me the question again; I'm  25 sorry.</p>	<p style="text-align: center;">Page 73</p> <p>1 business. I know 40 percent of the banks of  2 New Hampshire went out of business on the same day. It  3 was a tough time in New England.</p> <p>4 So that -- our -- our contacts at the bank  5 suddenly had other priorities, like looking for jobs,  6 most of them.</p> <p>7 Q. Approximately how many cash -- or postage  8 advances did Little &amp; Company provide prior to its sale  9 in 1995?</p> <p>10 A. Oh, I'm trying to remember some of them.  11 Exposures was the first postage advance. We did  12 Hartsong. We did Museum Collections. We did -- I'm  13 going to guess a dozen.</p> <p>14 Q. And were those ongoing through the sale to  15 First USA in 1995?</p> <p>16 A. Yes.</p> <p>17 Q. And after First USA purchased Little &amp; Company  18 and those postage advances were -- I assume they  19 continued to be repaid in the same manner you  20 described?</p> <p>21 A. I would assume the company was sold as a going  22 concern, and then -- so I think -- yeah, sure. One of  23 my requirements in the sale, which was an interesting  24 negotiation, was I -- I made it a requirement that I  25 wasn't required -- I didn't have to stay; the next day</p>

1 I could leave. I didn't work very well for other  
 2 people. As I said, I've always worked for companies I  
 3 started myself from six months out of school.

4 Q. So after the sale to First USA in 1995, in  
 5 order to continue being repaid in the manner you  
 6 described for these postage advances, were First USA  
 7 forced to alter its system in order to forward money to  
 8 Little & Company as a third party?

9 A. No, it wasn't forced to alter its systems. I  
 10 don't know if it did or not. I suspect it probably  
 11 changed the bank accounts around, but I don't know that  
 12 for sure.

13 Q. Did it have to change any of its computer  
 14 systems?

15 A. No.

16 Q. Did it have to add any fields to its computer  
 17 programs?

18 A. No.

19 Q. Could you describe --

20 A. Oh, one thing it did have to do, it did have  
 21 to -- because I didn't sell my name -- it did have to  
 22 expunge the word "Little" out of all their files and  
 23 everything in the computer -- in the computers. And as  
 24 far as I know, they haven't succeeded in doing that  
 25 yet, so -- but, no, nothing to do with postage

1 financing. They didn't have to change anything.

2 Q. And Mr. Bouchard was describing how Little &  
 3 Company was required to forward payment wherever the  
 4 merchant instructed it to forward payment. Do you  
 5 agree with that?

6 A. Yes.

7 Q. And when the merchant instructed Little &  
 8 Company to forward payment -- or if the merchant didn't  
 9 instruct Little & Company at all, would all the payment  
 10 of net proceeds be forwarded directly to the merchant's  
 11 account?

12 A. That's right.

13 Q. And would those payments be forwarded from  
 14 First National Bank of Louisville?

15 A. Yes.

16 Q. And if the merchant instructed Little & Company  
 17 to split the payment and forward the payment partially  
 18 to the merchant and partially to Little & Company, for  
 19 example, how would Little & Company enter that into its  
 20 system?

21 A. Exactly the -- well, we were -- by  
 22 Visa/MasterCard regulation then -- still are -- were  
 23 required to do whatever the merchant says. So we had  
 24 the ability to take the net proceeds and wire those net  
 25 proceeds to I think Larry said as many as five places.

1 I don't remember, but it was multiple places.  
 2 And we'd just enter in the algorithm by  
 3 which the payments were split and the bank account to  
 4 which the payments would go. And the merchant had one  
 5 account. Part -- it would -- the money would go -- or  
 6 if we were doing postage financing, we would say -- we  
 7 would put our bank account in there, and then the rest  
 8 would go to the merchant's account.

9 If we were doing something else -- we did  
 10 do other kinds of financing. If we did do other kinds  
 11 of financings, or if -- we supported other kinds of  
 12 financial institutions, we just put in the other  
 13 financial institution's bank account.

14 But the merchant would have to instruct us  
 15 to do that, and they would make a deal with the  
 16 financial institution, and the merchant won't tell us  
 17 what that deal was.

18 Q. So the computer system at Little & Company  
 19 prior to 1995 was capable of forwarding all the net  
 20 proceeds directly back to the merchant; is that right?

21 A. Yes.

22 Q. And that was done; is that right?

23 A. All the net proceeds back to -- yeah, that was  
 24 the normal way of doing it without any other  
 25 agreements.

1 Q. And the Little & Company system prior to 1995  
 2 had the capability of forwarding a portion of the net  
 3 proceeds to the merchant and a portion of the proceeds  
 4 to some other bank account; is that right?

5 A. Yeah, to, I think, four other bank accounts.

6 Q. And did FNBL actually forward that payment in  
 7 two different directions?

8 A. Yes. When we entered the data in our system,  
 9 what that did was generate ACH instructions, which we  
 10 sent to First Bank of Louisville, and First Bank of  
 11 Louisville executed those instructions.

12 Actually, when we were doing the postage  
 13 financing and the Museum Collection financings that we  
 14 were talking about, that was all done through First  
 15 National Bank of Louisville.

16 Between then and the time we actually sold  
 17 the company, we had formed a relationship with First  
 18 USA. And so First USA took on the role that First  
 19 National Bank of Louisville did, but it was done  
 20 exactly the same way as when we were working with First  
 21 Bank of Louisville.

22 Q. And what year was that?

23 A. I think that was -- I'd say '93, maybe the  
 24 middle of '93.

25 Q. So in the middle of '93, First USA replaced

1 NPC and FNBL within the cloud on Defendants' Exhibit --  
2 what is that -- 426?

3 A. Yes, and we actually took on the role of NPC,  
4 so -- and First USA took on the role of First National  
5 Bank of Louisville.

6 MR. GRAY: Could I please get Defendants'  
7 Exhibit 15.

8 Q. Mr. Little, I would like for you to look at the  
9 memo on the screen, which appears to be a memo to you  
10 from John Shirey, dated January 24th, 1990?

11 A. Yes.

12 Q. Do you see that?

13 A. Yes.

14 Q. Would you please read that to yourself, and  
15 I'll ask you to describe what this memo is about.

16 And it's two pages. We can flip the page.

17 A. Okay. I didn't finish the first page. I'm  
18 familiar with it without having read the second half of  
19 the first page, not reading the rest of the second  
20 page, because I was worried that it would disappear.

21 Q. Would you please describe what this memo is  
22 about.

23 MR. GRAY: And, Your Honor, may I approach  
24 the witness.

25 THE COURT: You may.

1 THE WITNESS: Thanks.

2 A. Yeah, John Shirey was at the time involved  
3 with new products. Steve Tritman is a name from the  
4 past.

5 But anyway, Alan Abbott, who was the CFO  
6 of Exposures, and I had been talking about the  
7 possibility of doing postage financing, and we were  
8 developing the idea of postage financing. And this --  
9 this explains what the idea was at that exact time.

10 Q. Who conceived of the idea of a postage  
11 advance?

12 A. It's unclear. I think Alan Abbott and I were  
13 talking about, and Alan sent a proposal at one point.  
14 Maybe -- I guess this is preproposal.

15 Q. Who was Alan Abbott?

16 A. Alan was the CFO of Exposures.

17 Q. Is Exposures the merchant that's listed on the  
18 postage advance agreement we looked at earlier, which  
19 is Defendants' Exhibit 16?

20 A. I didn't look at it.

21 Q. If you could look in that stack, it should be  
22 labeled.

23 MR. GRAY: The bottom left.

24 Q. Mr. Little, if you'll look on the screen, this  
25 is Defendants Exhibit 16.

1 A. Yes, that's Alan Abbott. I guess he was the  
2 vice president of marketing at the time. He was also  
3 the CFO.

4 Interestingly enough, most of the  
5 marketers in the direct-marketing industry have a  
6 background of finance. It's not marketing as most  
7 people think of it; it's analysis.

8 Q. And this agreement that's on the screen is  
9 dated June 22nd, 1990?

10 A. Right.

11 Q. The memo is dated January 24th, 1990.

12 A. Uh-huh.

13 Q. Is the early part of 1990 when this postage  
14 advance program was first implemented?

15 A. It appears that that's the correct date, yes.

16 MR. GRAY: If you could turn back to  
17 Exhibit 15, page 2. Pull out the first paragraph,  
18 please.

19 Q. Mr. Little, the first paragraph states, we  
20 should indicate what percentage of the Visa/MasterCard  
21 sale deposits will be deducted from each payment to  
22 member. Note that this is not net deposits. This  
23 percentage of sale deposits will be deducted from the  
24 amount of money that would otherwise be transferred to  
25 member.

1 Do you see that?

2 A. Uh-huh.

3 Q. Would you please describe what that paragraph  
4 is discussing.

5 A. This was when we were trying to figure out how  
6 to collect the fees from the proceeds. We were  
7 thinking at one time that we'd take the -- an amount of  
8 money that was calculated based on their sales, not  
9 their refunds, and then deduct that from net deposits,  
10 but the calculation percentage would be on the actual  
11 sales.

12 And that was -- and then -- and then we  
13 had to think about what the fee was, like would it be  
14 so much per day, or such-and-such a percent, or how  
15 would all that work?

16 And we experimented with that. We did it  
17 several different ways, is my memory, and, eventually,  
18 we wanted to make it real simple. And so what we did  
19 is, once a catalog is mailed, the sales from that  
20 catalog is quite predictable -- or at least the sales  
21 curve is quite predictable. Sometimes if a catalog  
22 does 10 percent better than they would expect it to do,  
23 the sales curve itself was always stable.

24 For example, three weeks after the catalog  
25 was mailed, about 50 percent of the sales were in the

1 house.

2 So we were working on trying to figure  
3 out, based on the expected sales from the catalog, how  
4 could we predict a way of making the loan repayment the  
5 easiest and the most business -- and the most  
6 consistent with the business requirements of the  
7 catalog.

8 So that's what that -- this was one of  
9 those attempts, I suspect, to figure out how we should  
10 deduct the fees from that.

11 Q. So when the idea was originally conceived --  
12 if you look at the last sentence of paragraph 4, it  
13 says, this percentage of sale deposits will be  
14 deducted.

15 Are sale deposits credit card receipts?

16 A. They're -- they're credit card receipts  
17 excluding refunds, because, obviously, if you sell  
18 \$100,000, and you have \$10,000 of refunds, the question  
19 was -- this said we would base the amount on the  
20 \$100,000, not the \$90,000 after refund.

21 Q. So you would take a percentage of the credit  
22 card transaction, the sale deposits, and deduct those  
23 from the amount of money that would otherwise be  
24 transferred to the member? That was the original idea?

25 A. Yes, and that would -- and the amount that

1 to be altered to accommodate this new idea, or was the  
2 infrastructure in place?

3 A. Most of the -- at the time, either most of the  
4 infrastructure was in place or all of the  
5 infrastructure was in place. I don't remember. We  
6 might have had to change something.

7 Q. What would you have had to change?

8 A. We had the capability to be algorithm -- the  
9 algorithms that we had. I mean, it wasn't much to --  
10 that wouldn't have been a big project for us.

11 Q. And if you look at paragraph 5, it says, we  
12 have to identify what the fee should be. My sense is  
13 we do something like deduct 21 percent from the  
14 Visa/MasterCard proceeds, of which we keep 1 percent  
15 and 20 percent goes back to the member.

16 Do you see that?

17 A. Yes.

18 Q. Does that mean that 20 -- 20 percent would be  
19 forwarded back to the member, or does that mean that  
20 20 percent would be applied to the principal amount of  
21 the advance?

22 A. I think that's a misprint. I think if -- I  
23 think we would have deducted 21 percent of the  
24 Visa/MasterCard proceeds, and 79 percent would have  
25 gone back to the member.

1 would otherwise be transferred to the member was what  
2 we call net proceeds.

3 Q. Okay. So the percentage that would be  
4 deducted from the amount of money that would otherwise  
5 be transferred to the member, is that -- that would  
6 otherwise be transferred to the merchant?

7 A. Yes.

8 Q. And the -- out of net proceeds; is that  
9 correct?

10 A. That's right.

11 Q. Okay. So the way this idea would alter the --  
12 the standard processing environment, it would take the  
13 net proceeds, the amount that would otherwise go back  
14 to the member; is that right?

15 A. That's right.

16 Q. And it would take a percentage of those and  
17 transfer those to another bank account other than the  
18 merchant's?

19 A. Yes, it could take a percentage. It could  
20 take a fixed fee. It could take a fixed fee that  
21 varied by day that was calculated on the basis of  
22 the -- of what the catalog sales were projected to be.  
23 They could take it on so-much-per-sale transaction.  
24 That algorithm could take various forms.

25 Q. Did the -- did the Little & Company system have

1 Q. Okay. And then the last sentence says, this  
2 is basically a 5 percent fee on a loan whose average  
3 duration is somewhere between 29 and 34 days.

4 Do you see that sentence?

5 A. Yes.

6 Q. Were those postage advances typically repaid  
7 within 29 to 34 days?

8 A. It -- actually, I think it turned out to be  
9 longer. But it wasn't -- you know, it wasn't -- it was  
10 more like two months, probably.

11 MR. GRAY: Okay. And if I could please  
12 get Defense Exhibit 20.

13 Q. Mr. Little, this is another demand promissory  
14 note signed by Museum Publications of America on  
15 September 27th, 1993.

16 Do you see that?

17 A. Yes.

18 MR. GRAY: Okay. Now, I would like to go  
19 back to the full document and pull out the top  
20 paragraph, principal amounts held. There you go.

21 Q. Now, this appears to be the terms of the  
22 postage advance. The principal amount of the advance  
23 is \$204,224.48; is that right?

24 A. That's right.

25 Q. And that is the amount that would be paid to

1 the postmaster on behalf of the merchant?  
 2 A. Yes.  
 3 Q. And the next line says, management fee,  
 4 \$90,190.52. Do you see that?  
 5 A. Yes.  
 6 Q. What is the management fee?  
 7 A. The management fee is the way we charge for  
 8 our service. We originally toyed with the idea of  
 9 trying to figure out a percentage of outstanding  
 10 balance and all that stuff, and we just came to the  
 11 conclusion we would charge a management fee, and then  
 12 they would owe us the total of the principal amount  
 13 plus the management fee.  
 14 Q. Okay. And then if you drop down to the  
 15 second-to-last line in this excerpt, it says, daily  
 16 repayment, see repayment schedule.  
 17 A. Yes.  
 18 MR. GRAY: If I could please get the third  
 19 page of this exhibit. It's entitled Repayment  
 20 Schedule. If you could please call that up.  
 21 A. Uh-huh.  
 22 Q. Could you explain what this repayment schedule  
 23 represents.  
 24 A. Yes, that would -- of their projected  
 25 volume -- we took their projected volume as a result of

1 their sales from the catalog, and we mapped that to a  
 2 repayment schedule that I'm sure we had negotiated with  
 3 them and they agreed that that made sense, and that's  
 4 what -- that's what that payment schedule is.  
 5 Q. So would Little & Company in the postage  
 6 advance program sometimes take a fixed amount as  
 7 repayment and sometimes take a percentage of the credit  
 8 card transactions?  
 9 A. Yes, we could take a straight percentage of  
 10 the credit card transactions, or if we took a fixed  
 11 payment, that didn't really match their cash flow as  
 12 well, and this looks like a combination of the two.  
 13 Q. So as the postage advances was repaid -- were  
 14 repaid, sometimes the amount of repayment, it would  
 15 fluctuate with the business of the -- of the catalog  
 16 company; is that correct?  
 17 A. Yeah. It generally fit the business needs of  
 18 the catalog company. Remember, we were a catalog  
 19 company. My wife and I ran a catalog for 10 years. So  
 20 we understood this very well. We experienced the pain  
 21 of having to pay postage at a time when our cash  
 22 balances were the lowest seasonally. That's when you  
 23 mailed your next catalog. And the postage -- the post  
 24 office doesn't take credit; you have to pay cash. So  
 25 we experienced the pain. We knew -- we knew very well

1 how this worked from the Exposures point of view.  
 2 Q. Now, I would like to turn over to the Hanover  
 3 Finance program that Mr. Bouchard also discussed, which  
 4 seems to be intertwined with the postage advance  
 5 program, two of the agreements I referenced in that  
 6 last letter.  
 7 MR. GRAY: Could I get Exhibit 53, please.  
 8 Could you please call up the top left.  
 9 Q. It says -- this is a letter to -- it's  
 10 addressed to Michael Duffy?  
 11 A. Yes.  
 12 Q. Who is Michael Duffy?  
 13 A. He was my vice president of sales and  
 14 administration -- or finance and administration at the  
 15 time.  
 16 MR. GRAY: Call up the first paragraph,  
 17 please.  
 18 Q. The letter begins, as you know, for some time  
 19 we now have been -- for some time now, we have been  
 20 working to arrange a line of credit to assist us in  
 21 financing inventory. I am pleased to report that we  
 22 have now established a \$3 million line. The lender is  
 23 Hanover Finance Corporation, a subsidiary of Hanover  
 24 Direct.  
 25 Do you see that?

1 A. Yes.  
 2 Q. Are you familiar with lines of credit?  
 3 A. Sure.  
 4 Q. How do lines of credit operate?  
 5 A. It's -- a company has access to a certain  
 6 amount of cash. If it needs it, it takes it. As it  
 7 doesn't need it, it pays it back.  
 8 Q. So can a line of credit be used as an  
 9 operating account for a business?  
 10 A. Yes.  
 11 Q. So in this Hanover Finance situation, did  
 12 Boston Publishing operate its business off of that line  
 13 of credit and have Little & Company forward payment to  
 14 Hanover Finance to pay that line of credit down?  
 15 A. That's how this was set up, yes.  
 16 MR. GRAY: If you could turn to the second  
 17 page of this exhibit, please. And call up the first  
 18 paragraph.  
 19 Q. The first paragraph says, upon written  
 20 instruction from Hanover Finance, designated in writing  
 21 by Hanover Finance, without further action by Boston  
 22 Publishing, you will make all payments of net proceeds  
 23 or any other credits, reserves, deposits, et cetera,  
 24 hereafter due to Boston Publishing under the member  
 25 agreement in respect to card sales directly by wire

1 transfer to such account or accounts as Hanover may  
2 designate in writing.

3 Do you see that?

4 A. Yes, I do.

5 Q. And could you please explain what that means.

6 A. Yeah, that was consistent with what we would  
7 do, because it was up to the merchant to tell us what  
8 to do, and this was the merchant telling us that they  
9 were putting Hanover in a position to -- to act in  
10 their behalf. And so I do -- I do remember this.

11 And what that would mean is Hanover could  
12 call us and direct money to go, and they didn't  
13 necessarily have to direct all of it. But they had --  
14 they had the ability to direct where all of the money  
15 went, and they could say, send all of it to Hanover  
16 House, some of it to Hanover House, and some of it to  
17 Museum Collections. They basically stood in the shoes  
18 of Museum Collections.

19 Q. Now, is the reference to member agreement in  
20 there, is that a reference to a member agreement that  
21 is marked Plaintiff's Exhibit 51?

22 A. Yes.

23 Q. The document that says Member Agreement.

24 A. Yes.

25 MR. GRAY And could you please call up the

1 Q. Okay. So these four documents together  
2 describe the operation of this Hanover Finance  
3 situation; is that right?

4 A. Yes.

5 Q. Okay. Could you please tell me on  
6 Mr. Bouchard's diagram there how payment would have  
7 been forwarded in the Hanover Finance situation -- or  
8 was forwarded, I'm sorry.

9 A. Sure. We would have calculated the net  
10 proceeds on a daily basis, and we've talked about, as  
11 Larry calls it, the cloud, where all these players are,  
12 and we -- we would calculate the net proceeds, and then  
13 we would produce from that our -- our daily ACH  
14 instructions or -- or our daily transfer instructions,  
15 because our daily transfer instructions would then go  
16 to First National Bank of Louisville, and they follow  
17 those instructions.

18 Most of them were ACH's. Some of them  
19 were wires. But then FNBL would take those  
20 instructions and forward the money to whatever bank  
21 accounts our instruction -- and whatever amounts our  
22 bank -- our instructions told them to.

23 Q. When you instructed -- or when Little & Company  
24 instructed FNBL to forward payment to the -- the  
25 Boston -- what is it -- Bank of Boston bank account,

1 second paragraph on page 2 of Exhibit 13.  
2 I'm sorry, 15.

3 Q. And, again, we've already been over this, but  
4 it says that Hanover Financing acknowledges that its  
5 interest in the -- security interests in the rights of  
6 the borrower, the payment are subject to the rights of  
7 Little & Company under two promissory notes.

8 A. Yes.

9 Q. Do you see that?

10 And these promissory notes are the Museum  
11 Publications promissory notes --

12 MR. GRAY: I need the numbers.

13 Q. Defendants' Exhibit 22. That's dated January  
14 of '94. Do you see that?

15 A. Yes.

16 Q. And then it says it's also subject to a demand  
17 promissory note dated January 28th, 1994.

18 MR. GRAY: And could I please get  
19 Defendants' Exhibit 23.

20 Q. Are those two promissory notes the promissory  
21 notes referenced in this -- this letter?

22 A. I -- yes. I assume so, yeah.

23 Q. Okay. So this letter references three other  
24 documents that you've seen today; is that right?

25 A. Yes.

1 was that just Little & Company forward -- moving funds  
2 from one of its own accounts to another of its own  
3 accounts?

4 A. No, it was moving from First National Bank of  
5 Louisville's operating account to a Little & Company --  
6 or the -- the Little & Company account at Bank of  
7 Boston.

8 Q. Did Little & Company have any ownership at all  
9 in the operating account at FNBL?

10 A. No.

11 Q. Did Little & Company have any control over that  
12 operating account?

13 A. We did in the sense that we could issue  
14 instructions of where the wires from that -- funds  
15 transferred from that account should go. But, no, we  
16 didn't have any legal control. In fact, quite the  
17 opposite. It's a requirement of Visa and MasterCard  
18 that we don't.

19 Q. Please explain that. Who does Visa/MasterCard  
20 require to have control?

21 A. First National Bank of Louisville. That's the  
22 bank -- that's the -- that's the function of the  
23 acquiring bank. It's one possible function, but  
24 it's -- it's why it's an acquiring bank.

25 What happened was -- it wasn't set up that

1 way, as I said, several years before. And there was a  
 2 company called Charger that misused the funds. They  
 3 got the funds from the banking system and used them as  
 4 their own working capital, eventually went out of  
 5 business, and stuck Visa and MasterCard for -- for some  
 6 liabilities to merchants that they didn't pay.

7 Visa and MasterCard didn't really want to  
 8 deal with anybody other than the member banks of Visa  
 9 and MasterCard. And so they -- they made it -- they  
 10 changed the rules so it was absolutely essential that  
 11 all funding to merchants came from -- it could be the  
 12 acquiring bank, which had to be a member bank of  
 13 Visa/MasterCard.

14 Q. And I believe you testified to this earlier,  
 15 but a merchant has no access to those funds at the  
 16 acquiring bank; is that correct?

17 A. No. The funds at the acquiring bank are all  
 18 of the merchants for -- that Little & Company would be  
 19 processing. So the First National Bank of Louisville  
 20 didn't know how to distinguish whose funds were whose.

21 Q. And, again, all payments from card issuers  
 22 were always deposited into the acquiring bank's  
 23 account; is that correct?

24 A. It was true then and it's true now.

25 Q. Okay. So could you briefly run through one

1 more time exactly how the payment of net proceeds was  
 2 split in the Hanover Finance situation.

3 A. Okay. The -- the first thing that would  
 4 happen is net proceeds would be calculated, and net  
 5 proceeds are calculated as a result of all of the  
 6 things that happened in the -- in what Larry's called  
 7 the cloud.

8 Then from -- after the net proceeds was  
 9 calculated, then we applied the algorithms or whatever  
 10 we'd agreed -- or the -- the ways we agreed with the  
 11 merchants to distribute those net proceeds.

12 Q. And how would you calculate those or apply  
 13 those?

14 A. According to the merchant's instructions, and  
 15 that was generally because we filled in some parameters  
 16 in the system, and we filled those parameters in  
 17 typically once.

18 What it says is, here's how you calculate  
 19 it, and you keep paying until this amount is reached,  
 20 and then you stop paying.

21 So anyway -- so according to those  
 22 parameters, the net proceeds would be distributed in --  
 23 in most cases distributed directly to the merchant. In  
 24 the cases where there were other parameters or other  
 25 requirements, it would calculate that and distribute it

1 to one, two, three or four other bank accounts other  
 2 than the merchants according to those parameters.

3 Those -- after those calculations were  
 4 made, all done untouched by human hands and  
 5 computerized, the -- the daily -- those would be  
 6 entered as part of the daily funds transfer instruction  
 7 list, and the funds transfer instruction list was a  
 8 file that said -- said, okay, FNBL, you take this  
 9 amount of money and send it to this account via wire;  
 10 this amount of money, send it to this account via ACH,  
 11 et cetera, and just went down the list until we  
 12 distributed all the net proceeds from all of our  
 13 merchants for that day, and then FNBL executed the  
 14 funds transfers.

15 Q. So just to make sure I understand, there was  
 16 one instruction that said, send processing fees to  
 17 Little; is that right?

18 A. Yes. One of those instructions was to send --  
 19 so we would get one wire every day for our accumulated  
 20 processing fees that went to -- that were -- that were  
 21 in the FNBL account, yes.

22 Q. And then a separate instruction would say,  
 23 send this amount out of net proceeds to Little &  
 24 Company's Bank of Boston account?

25 A. Yes, and that -- that was a separate

1 instruction.

2 Q. And that was the postage advance repayment; is  
 3 that right?

4 A. Postage --

5 Q. Postage advance repayment.

6 A. Yeah. There would be one of those transfers  
 7 for each merchant that was involved and active in the  
 8 postage advance program.

9 Q. And a third instruction would say, forward X  
 10 percentage to Hanover Finance; is that right?

11 A. Yes.

12 Q. Okay. And then a fourth instruction was,  
 13 forward the remainder to the merchant? Was that -- did  
 14 Little & Company ever --

15 A. It could be -- a fourth instruction could be,  
 16 pay my printer some amount. A fifth instruction might  
 17 be to send all the rest to the merchant.

18 Q. Did Little & Company's computer system  
 19 distinguish between Little & Company accounts and other  
 20 entities' accounts?

21 A. No.

22 MR. GRAY: May I please get --

23 Q. Before I go there, was anything confidential  
 24 about what we've been discussing today?

25 A. No. We were proud of it, actually.

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1 Q. I'm sorry?  
 2 A. We were proud of it. We didn't advertise it,  
 3 but we certainly told people about it. We knew the  
 4 catalog industry well, and it was a well-known program.  
 5 Q. Why didn't Little & Company provide more  
 6 than -- more patent -- more postage advances than 20 or  
 7 30?  
 8 A. Well, at the time, as Larry said, it was  
 9 fundamentally my money, and I didn't -- and we were  
 10 trying to get a line of credit so that we could expand  
 11 the business. But the banking system was such that  
 12 they weren't lending any money to anybody in those  
 13 days.  
 14 MR. GRAY: Could I get Defense Exhibit 15,  
 15 please.  
 16 Q. Again, this is the memo we discussed earlier.  
 17 MR. GRAY: If I could get the second page  
 18 again, and call up the fourth paragraph.  
 19 Q. So, again, the last sentence of this paragraph  
 20 says, this percentage of sale deposits will be deducted  
 21 from the amount of money that would otherwise be  
 22 transferred to the member.  
 23 So the postage program was Little &  
 24 Company's implementation of this concept discussed in  
 25 this memo; is that right?

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1 A. Yes.  
 2 Q. And then in conjunction with the postage  
 3 advance program, merchants sometimes had other  
 4 creditors which they wanted to be repaid out of card  
 5 transactions as well?  
 6 A. Yeah. And there were other programs that  
 7 weren't postage advance but they were other kinds of  
 8 creditors, yes.  
 9 Q. Approximately how many merchants instructed  
 10 Little & Company to forward payments to accounts other  
 11 than their own prior to 1995?  
 12 A. Prior to 1995? I don't know. I'm guessing  
 13 20, 30, maybe.  
 14 Q. When you came up with the postage advance idea  
 15 in conjunction with Alan Abbott, did you guys think  
 16 that the payment method was unique at all?  
 17 A. No.  
 18 Q. Why not?  
 19 A. Because from my earliest exposure to the  
 20 credit card environment, when stuff was still paper,  
 21 merchants would take their paper to the local bank --  
 22 well, let me back up a second.  
 23 My first exposure ever to the credit card  
 24 system was probably in the late '60s when I was asked  
 25 to play a consulting role -- I don't remember the

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1 details -- but to a group that was helping figure out  
 2 how to form MasterCard. BankAmericard --  
 3 BankAmericard, done by Bank of America, was franchised  
 4 in every metropolitan city to one bank.  
 5 All the other banks wanted to get in on a  
 6 good thing, and that's where MasterCard came from, and  
 7 they were trying to figure out how to get -- how to get  
 8 going. And they were talking about the advantages and  
 9 how to -- how to get banks to join this new association  
 10 and what to do.  
 11 And one of the things they were talking  
 12 about is when they had -- when the local merchants took  
 13 paper slips to their local banks -- they were paper;  
 14 they weren't contemplating all the electronic stuff --  
 15 that the income stream from their credit cards would be  
 16 good collateral for the loans they gave their merchant,  
 17 and they -- that was, I remember, talked about as a  
 18 feature.  
 19 Now, I don't really remember what happened  
 20 to that, but I do remember that was the first time I --  
 21 it occurred to me that credit card proceeds would be  
 22 good collateral for loans. And it was in a different  
 23 time and a different environment.  
 24 But I looked at this as the same thing as  
 25 I had been exposed to in the late '60s.

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1 Q. So is it your understanding that splitting  
 2 this stream of payments to the merchant was not  
 3 invented in 1997?  
 4 A. Was not what?  
 5 Q. Was not invented in 1997.  
 6 A. No, I certainly didn't.  
 7 Q. And you mentioned that there were  
 8 approximately 20 to 30 merchants that instructed  
 9 Little & Company to split the payment stream prior to  
 10 1995. About how much money did they receive in cash  
 11 advances?  
 12 A. Oh, I don't know. Probably \$5 million. I'm  
 13 guessing. I don't really remember.  
 14 Q. And you were in the courtroom earlier when  
 15 Mr. Goldman described the repayment method of  
 16 AdvanceMe; is that right?  
 17 A. Yes.  
 18 Q. If Mr. Goldman had come to you and described  
 19 that repayment method in 1992 at Little & Company, what  
 20 would Little & Company have had to do to implement that  
 21 system?  
 22 A. Nothing. Nothing different, just enter the  
 23 parameters.  
 24 MR. GRAY: Nothing further, Your Honor.  
 25 THE COURT: Pass the witness? All right.

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1       Very well. We're -- as I explained  
2 yesterday, we're going to recess this afternoon at  
3 3:30. We'll reconvene tomorrow immediately after --  
4 following the suppression hearing that starts at 9:30.  
5 I don't know how long that will take. I would say  
6 anywhere from an hour to two to three hours.

7       So will counsel just be on standby, ready  
8 to start back as soon as we get through with that.

9       By way of time, Plaintiffs have expended  
10 eight hours and 10 minutes, and Defendants have  
11 expended five hours and 45 minutes.

12      We'll be in recess until tomorrow morning.

13      THE BAILIFF: All rise.

14      (Proceedings adjourned at 3:31 p.m.)

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1           CERTIFICATION

2  
3       I HEREBY CERTIFY that the foregoing is a  
4 true and correct transcript from the stenographic notes  
5 of the proceedings in the above-entitled matter, to the  
6 best of my ability.

7  
8       \_\_\_\_\_  
9 THERESE J. CASTERLINE, CSR, RMR, CRR                   Date  
10 Official Court Reporter  
State of Texas No.: 5001  
11 Expiration Date: 12/31/07  
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